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HOBALAN N VELLO v. PP

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
AMELATI PARNELL JC
[CRIMINAL CASE NO: BKI-45B-4-7-2021]
22 OCTOBER 2021
B [2021] CLJ JT(15)

Abstract – *In allowing bail in a non-bailable offence under s. 302 of the Penal Code, for which the accused was charged, the court revisited the case of PP v. Dato' Balwant Singh, wherein the court stated, inter alia, that the seriousness of the offence could not be the dominant factor; the court ought to also consider the health condition of the accused person.*

D ***CRIMINAL PROCEDURE:*** *Bail – Non-bailable offence – Charge under s. 302 of Penal Code – Whether accused person fell under category of sick and infirm person within proviso to s. 388 of Criminal Procedure Code to be granted bail – Whether prosecution proved accused to be of flight risk – Whether would tamper with witnesses if released on bail – Whether court should exercise discretion in allowing bail*

E

The accused was charged for an offence under s. 302 of the Penal Code ('PC'). By way of a notice of motion, the applicant ('accused') applied for bail pending disposal of the trial on conditions to be set by the court on the grounds, *inter alia*, that: (i) the accused was sick and infirm, with limited F mobility; (ii) the accused was unable to walk and had been wheelchair-bound since remanded; (iii) the accused needed to undergo urgent medical treatment and spinal surgery; (iv) the accused had been on frequent visits to the Orthopaedic Clinic Ward with the last admission from early July 2021 until discharged on 26 July 2021; (v) there was a possibility of further delay to carry out surgery on the accused due to the current pandemic situation thus G with bail granted, the accused could undergo surgery and post-surgical recovery in a private hospital of his choice at his own family expenses without further delay; and (vi) there was no flight risk on the accused. The prosecution, on the other hand, argued that the grounds forwarded by the accused were more out of convenience rather than of exceptional and very H special circumstances. It was submitted that any grounds that was based on convenient circumstances should not be considered by this court in exercising its discretionary power to allow this application.

Held (allowing application by accused):

I **(1)** As the accused was charged under s. 302 of the PC, by virtue of the First Schedule of the Criminal Procedure Code ('CPC'), his offence was non-bailable. As such, grant of bail is at the discretion of the court.

Section 388(1) of the CPC provides a qualification in capital punishment cases whereby bail shall not be granted if there appear reasonable grounds for believing that the accused is guilty of such offences, in the absence of which the accused may still be granted bail. (paras 5 & 6)

(2) Based on the medical reports, the accused was sick and infirm and required constant medical attention and surgical intervention. Due to his past medical history, aggravated by the incidents in the present case, he was in constant pain, unable to walk and suffering from urinary and bowel incontinence. The accused, notably, 'needs regular medication for pain control and limited physiotherapy and rehabilitation due to the pain and disability.' The court was satisfied that the accused was a sick and infirm person within the meaning of the proviso to s. 388(1) of the CPC. The accused was thus not affected by the restriction placed on s. 388(1) and was entitled to be enlarged on bail at the discretion of the court. (paras 11, 19 & 27)

(3) The main objective of bail is to ensure that the accused will attend court during trial and that, while on bail, will not interfere with the administration of justice. Although the charge faced by the accused was very grave, this must be balanced against the failure by the prosecution to show that there were reasonable grounds for believing that the accused had committed the offence that he had been charged with. There was no evidence to suggest that the accused was a flight risk or would tamper with witnesses if released on bail. (paras 31 & 36)

(4) While the prison may be able to provide medical facilities, in view of the current pandemic and current state of the accused, it may be preferable for the accused to be in a place where he could have access to immediate medical treatment. In the absence of any evidence to suggest that the accused would repeat such offence while on bail, the accused should be granted bail to undergo urgent medical treatment and spinal surgery subject to the following conditions: (i) the bail in the sum of RM200,000 (RM50,000 deposited in court) with two local sureties and one of them was his wife; (ii) prior to the surgery and post-surgery, the accused to be taken care by his wife; (iii) that his international passport to be impounded; (iv) no inter-State travelling without leave of court; (v) to report to the nearest police station once in two weeks; and (vi) not to approach or interfere with any of the witnesses. (paras 38, 40 & 41)

Case(s) referred to:

Che Su Daud v. PP [1978] 1 LNS 23 HC ***(refd)***
Leow Nyok Chin v. PP [1999] 1 CLJ 647 HC ***(refd)***
Loy Chin Hei v. PP [1981] CLJ 177; [1981] CLJ (Rep) 178 HC ***(refd)***
PP v. Dato' Balwant Singh [2002] 4 CLJ 155 HC ***(foll)***
PP v. Wee Swee Siang [1948] 1 LNS 49 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 388(1), First Schedule
Penal Code, ss. 148, 302, 304(b)

For the applicant - Ram Singh, Kimberly Ye & Chen Wen Jye; M/s Ram Singh & Co
For the respondent - Azreen Yas Mohamad Ramli; DPP

Reported by S Barathi

JUDGMENT

Amelati Parnell JC:

[1] The accused is charged for an offence under s. 302 of the Penal Code which is read as follows:

> That you on 18th day of December 2020, between 11.30pm to 12.05am of 19th December 2020, located at the outside of My Heaven Seafood Restaurant, Lot 41, Block G, Ground Floor in the District of Beaufort, in the State of Sabah, did commit murder by causing death of one Albert @ Recquel A. Agang (Male/53 Years Old) and that thereby committed an offence punishable under section 302 of the Penal Code (Act 574) of the laws of Malaysia.

[2] By way of a notice of motion dated 30 August 2021, the applicant/accused applied for bail pending disposal of trial on conditions to be set by the court on the following grounds:

(i) the accused is sick, infirm with limited mobility;

(ii) the accused is unable to walk and has been wheelchair-bound since remanded;

(iii) the accused needs to undergo urgent medical treatment and spinal surgery at Orthopaedic Clinic at Queen Elizabeth Hospital (QEH), Kota Kinabalu;

(iv) the accused has been on frequent visits to the Orthopaedic Clinic Ward of QEH 2 with the last admission from early July 2021 until discharged on 26 July 2021;

(v) there is a possibility of further delay to carry out surgery on the accused due to the current pandemic situation thus with bail granted, the accused can undergo surgery and post-surgical recovery in a private hospital of his choice at his own family expenses without further delay;

(vi) there is no flight risk on the accused.

[3] The following cause papers were filed herein:

(i) notice of motion dated 30 August 2021 (encl. no. 5);

(ii) affidavit in support of Ram Singh affirmed on 30 August 2021 (encl. no. 6);

(iii) affidavit in reply (1) of Nurul Atiqah binti Ahmad affirmed on 6 October 2021 (encl. no. 11);

(iv) affidavit in reply (2) of Prem Nasir bin Rahman Kunasagaran affirmed on 6 October 2021 (encl. no. 12); and

(v) affidavit in reply (3) of Norisyam bin Yusoff affirmed on 6 October 2021 (encl. no. 13).

[4] Learned counsel for the accused had stated in his submission that there is no reply to the affidavits in paras. (iii), (iv) and (v) above because questions of facts on bail and surgical intervention of the applicant are repetitive.

The Law On Non-Bailable Offences

[5] As the accused is currently charged under s. 302 of the Penal Code, by virtue of the First Schedule of the CPC, his offence is non-bailable. As such, whether bail is to be granted is at the discretion of the court.

[6] Section 388(1) of the CPC provides a qualification in capital punishment cases whereby bail shall not be granted if there appear reasonable grounds for believing that the accused is guilty of such offences, in the absence of which the accused may still be granted bail. Nonetheless, such qualification is inapplicable to instances enumerated in the proviso to s. 388(1) that is:

> Provided that the Court may direct that any person under the age of sixteen years or any woman or **any sick or infirm person** accused of such an offence be released on bail.

[7] Reference is made to the case of *Loy Chin Hei v. PP* [1981] CLJ 177; [1981] CLJ (Rep) 178; [1981] 1 MLRH 63; [1982] 1 MLJ 31 Wan Yahya J stated:

> A non-bailable offence is no doubt an offence in respect of which the accused may be refused bail, but it is not an absolutely unbailable offence because the court has been given the discretionary power to grant bail in certain circumstances and, in the case of offences punishable with life imprisonment or death, for special reasons.

[8] In *PP v. Dato' Balwant Singh* [2002] 4 CLJ 155; [2002] 1 MLRH 505, Augustine Paul J held:

> Where an application for bail is made in a case punishable with, *inter alia*, death the court must first determine whether the proviso is applicable. If it is the resultant matter for determination is whether the court should grant bail in the exercise of its discretion. It is superfluous to state that where the proviso applies the accused is not entitled to bail as of right but only at the discretion of the court as in the case of other non-bailable offences.

[9] In exercising its discretion, the non-exhaustive factors to be considered by the court as provided in the case of *PP v. Wee Swee Siang* [1948] 1 LNS 49; [1948] MLJ 114 are as follows:

(1) Whether there was or was not reasonable grounds for believing the accused guilty of the offence;

(2) The nature and gravity of the offence charged;

(3) The severity and degree of punishment that might follow;

(4) The danger of the accused absconding if released on bail;

(5) His character, means and standing;

(6) The danger of the offence being continued or repeated;

(7) The danger of witnesses being tampered with;

(8) Opportunity to the accused to prepare his defence; and

(9) The long period of detention of the accused and probability of further period of delay.

[10] In *PP v. Dato' Balwant Singh* (*supra*) the court also opined that:

> ... the health of the accused is also a factor that can be considered. The seriousness of the offence certainly cannot be the dominant consideration (see *State of Kerala v. MK Pyloth* [1973] Cri LJ 869).

Medical Conditions

[11] In this present case, the main grounds submitted by the accused are that he is sick and infirm and as such requires constant medical attention and surgical intervention. Due to his past medical history, aggravated by the incidents in this present case, he was in constant pain, unable to walk and suffering from urinary and bowel incontinence.

[12] Based on the medical report by Dr Sutharsan a/l Kannan of Beaufort Hospital dated 18 February 2020, the accused has a history of post-traumatic injury due to motor vehicle accident in 2003 which resulted in him sustaining L3/L4 fracture.

[13] The accused has undergone posterior fixation instrument in Kuala Lumpur Hospital and was referred to Beaufort Hospital on 2 April 2018 due to a complaint of lower back pain radiating to the left loin associated with numbness and shooting pain radiating down to the left lower limb.

[14] Based on the lumbosacral x-ray, Dr Sutharsan noted broken implant rod over L4/L5 and diagnosed the accused with broken posterior instrument implant rod. His symptoms were relieved upon analgesia with further reference of the accused to QEH Orthopaedic Specialist Clinic on 4 April 2018. However, Dr Sutharsan noted that the accused refused surgical removal of the broken implant and opted for pain management only.

[15] The accused was again seen by Dr Sutharsan on 7 May 2021. In his medical report dated 18 May 2021, Dr Sutharsan finds the accused is in need of analgesia to relieve the back pain and opined surgical intervention is optional to release him of his symptoms but a second opinion from a spine surgeon would benefit.

[16] In reference to the medical report prepared by Dr Wan Mohd Syazwan bin Wan Mohd Sabri of Beaufort Hospital dated 8 March 2021, the accused was referred to him on 2 March 2021. His past medical history is consistent with that reported by Dr Sutharsan in his report dated 18 February 2020 except for further clarification of the accused's reason in refusing surgery despite being counseled so upon referred to QEH 2 Orthopaedic Clinic Ward. The accused refused surgery for fear of the risk of paraplegia and long-term recovery process. The accused also complained that he was beaten up by a group of drunken people by kicking and throwing furniture at him which exacerbated his condition.

[17] Other than that, Dr Wan Mohd Syazwan also found the accused to be suffering from broken L3/L4 posterior instrument implant rod coupled with paraparesis (partially unable to move legs) and neurogenic bowel and bladder (urinary and bowel incontinence). Thus, a caretaker for nursing care is required. The accused was again referred to QEH 2 Orthopaedic Ward on 7 March 2021 for further assessment by a medical specialist.

[18] In the medical report prepared by Dr Norisyam bin Yusoff, the Orthopaedic Specialist at QEH 2 dated 28 May 2021, on the complaint of back pain, the medical specialist finds that "it is unlikely related to broken spinal implant over L3-L5 in which the implant construct is still stable to provide the support as evidenced by dynamic view x-ray of lumbosacral spine." The medical specialist also found "previous complaint of incontinence or incomplete voiding are not supported by MRI finding" but acknowledged that "it can occur in patient that experiencing severe pain due to dysregulation of autonomic nervous system". As for treatment, no mention of invasive and urgent surgery required. Instead, the accused was subjected for "non-operative management with physiotherapy and pain management and subsequently rehabilitation. If conservative treatment is unsuccessful, then next-step up management will be therapeutic and diagnostic spinal transforaminal injection to identify the source of pain and radiculopathy for more invasive managements."

[19] On 24 May 2021, the accused alleged to have minimal improvement on pain scores. As such, the accused was scheduled for "transforaminal injection of left L4/L5 on 28 June 2021 to identify the source of pain and subsequently control the pain severity and disability." No mention of any urgent spinal surgery required. Nonetheless, there are no findings to suggest that the accused was feigning pain. In fact, he has been taking medications

to manage his pain. The medical specialist also noted that the accused "needs regular medication for pain control and limited physiotherapy and rehabilitation due to the pain and disability."

Special Circumstances

[20] It was submitted that special circumstances are categorically stated in the affidavit in support of Ram Singh (encl. no. 6) at paras. 46 to 50 and most of Dr Norisyam bin Yusoff's affidavit in reply (encl. no. 13), suggesting surgical intervention towards the applicant's injury.

[21] In reference to para. 10 of encl. no. 13 and after discussing with the accused's family members and his doctor regarding his conditions while he was detained in hospital, learned counsel seek this court's consideration and indulgence, though under s. 302 Penal Code (non-bailable offence) to order bail on an urgent basis:

(i) The accused needs special care and attention from the hospital nurses and proper recovery can be achieved with the help and care of his family. It is the learned counsel's humble opinion that the prison could not facilitate special care and attention to the accused.

(ii) The COVID-19 situation may get worsened especially places like prison blocks and the chances of contracting COVID-19 is higher in such confined places.

(iii) With regard to the above medical condition of the accused observed by the doctors attended while the accused was in Beaufort Hospital and wish to state the following:

> Throughout the stay of this patient in the ward in the Hospital Beaufort, we have observed that this patient required complete rest on the bed with no weight bearing due to the spine injury. His activities of daily living is partially independent where he requires nursing care from well-trained caretaker since he is on diapers because of his urine and bowel incontinence (unable to fully control his urination and bowel opening). The risk of fall and acquire further injury is very high if not given special care as it been happened previously during the stay in IPD Beaufort where this patient had a fall from the height of 10 stairs when the police officers were handling the mobilisation of this patient. I would suggest this patient should be taken care in the hospital by nurses accompanied by family members so that the hospital personnel able to train the family members on the knowledge and skills on taking care a patient with spine injury. Improper care may end up with worsening of the current spine injury and bed rest increases the risk of contracting covid or other lung infection or atelectasis (collapse of lung tissue) because fluid tends to build up in the lungs

because the muscles weakness failed to remove excess fluid from the body, especially with the environment of prison where is has poor ventilation.

(Reference is made to the medical report dated 8 March 2021 on progress of patient while under the care of the doctor including follow up).

[22] Reference is made to Dr Norisyam bin Yusoff's affidavit in reply (encl. no. 13) at para. 5(a) to (l). His affidavit had explained the serious condition of the accused through his own observation and examination carried out on the patient. No doubt the accused requires surgical intervention and this is not in dispute at all.

[23] Further referring to Dr Norisyam bin Yusoff's affidavit in reply (encl. no. 13) at para. 6, where it was stated at the last line:

... There is a possibility of worsening motor function due to worsening compression of nerve roots.

[24] It was further submitted that paras. 10, 11 and 12 of Dr Norisyam bin Yusoff's affidavit in reply (encl. no. 13) never denied the need of a caretaker in the ward and this is consistent with prayer (c) of the notice of motion (encl. no. 5).

[25] Reference is made to Dr Prem Nasir bin Rahman Kunasagaran's affidavit in reply (encl. no. 12) at para. 5(e), where it was stated:

(e) According to the record, the applicant has been scheduled to be operated and the applicant has been told to discuss the matter with his family regarding the operation since the operation will be risky.

[26] Further, at para. 5(g) of Dr Prem Nasir bin Rahman Kunasagaran's affidavit in reply (encl. no. 12), where it stated:

(g) At all material time, all the necessary logistics needed to bring any patient to the hospital is provided by the Prison Department. In any serious case, the Medical Officer on duty will instruct the Prison Department to bring the patient to the hospital.

[27] Hence, as per Dr Norisyam bin Yusoff's affidavit in reply (encl. no. 13), the accused is suffering from severe back problems and surgical intervention is vital. I am satisfied that the accused is a sick and infirm person within the meaning of the proviso to s. 388(1) of the Penal Code. Following the case of *PP v. Dato' Balwant Singh* (*supra*), the accused herein is not affected by the restriction placed on s. 388(1) and is entitled to be enlarged on bail at the discretion of the court.

A

No Flight Risk

[28] It was drawn to the attention of this court that it is clearly stated in the affidavit in support of Ram Singh (encl. no. 6) at paras. 48 and 49 in that:

> 48. I verily aver that the applicant/accused will not object to further conditions to be imposed by this Honourable Court as long as it is practical to secure his attendance in the Court even after surgery is completed and there is no flight risk at all on the applicant/accused.
>
> 49. I also wish to state that the applicant/accused's application herein do not cause any prejudice to the prosecution, police authorities and/or the prison's authorities due to the fact that there is no risk of absconding on his part as he has his family permanent home at No. 31, Taman Foh Sang 1, 89807 Beaufort, Sabah and his children are attending schools at Beaufort, Sabah.

[29] As a matter of fact, it was submitted that this court may impose many conditions on the accused person such as, surrendering his passport, electing his wife as a bailor/surety, visitation to the nearest police station ie, IPD Beaufort weekly, until disposal of his case.

[30] In *PP v. Dato' Balwant Singh* (*supra*) it was held:

> [26] There can be no dispute that the charge faced by the accused is a very grave one. This, however, must be balanced against the failure by the prosecution to show that there are reasonable grounds for believing that the accused committed the offence that he has been charged with. This is the result of the press statement by the police to the effect that the act of the accused is justified. This favours the grant of bail (see *R v. Hawken* [1944] 1 WWR 408). It has also been held that where an accused could properly raise the plea of self-defence to a charge of murder it is a factor to be considered in granting him bail (see *R v. Stewart* [1946] 3 WWR 160). The gravity of the charge therefore does not weigh heavily against the accused. No argument was advanced by the prosecution to at least indicate that the accused would abscond or tamper with witnesses if released on bail. As I noted earlier these are matters of paramount consideration. This is because the very object of granting bail is to ensure that the accused will attend at the trial and that, while on bail, he will not interfere with the administration of justice by tampering with witnesses. While the prosecution did not address these issues the defence ensured that such infractions will not occur. I find no reason to disagree as even the police did not consider it necessary to arrest the accused after the incident. The standing of the accused and his age also militate against the prospect of him absconding. I was therefore unable to hold that the accused would abscond or tamper with witnesses if released on bail. The medical report tendered by the defence shows that the accused who is aged 81 is in very poor health and needs to be monitored regularly. Though medical facilities are available in the prison it may be preferable for the accused to be in a place where he can have access to immediate medical treatment. It cannot be said that the accused would repeat the offence if released on bail. The social status of a person, as in the case

of the accused, also assumes relevance along with the other circumstances of the case (see *Juglekor v. Emperor* ILR 54 All 115 (FB), *Raja Norendralal Khan v. Emperor* ILR 36 Cal 166). It may not be in the public interest to grant bail to a person facing a murder charge. However, where the other factors favour an accused the requirements of public interest can be satisfied by imposing suitable conditions in granting bail. It is settled law that a court may impose conditions in granting bail (see *PP v. Dato' Mat* [1991] 1 MLRA 213; [1991] 2 MLJ 186; [1991] 1 CLJ 385, *PP v. Abdul Rahim Hj Ahmad & Ors* [1988] 3 MLRH 515; [1988] 3 MLJ 272). The exceptional circumstances of this case compelled me to conclude that the accused ought to be enlarged on bail subject to the imposition of certain conditions. I pause to add that the granting of bail in an offence of murder is not unprecedented. It has been done, for example, in the Indian case of *Niranjan Singh and Anor v. Prabhakar Rajaram Kharote and Others* AIR [1980] 785, in the Australian cases of *R v. Malone* [1903] St R Qd 140, *R v. Vines* [1930] QWN 35 and *R v. McDowell* [1954] QWN 47 and in the Canadian cases of *R v. Stewart* [1946] 3 WWR 160 and *R v. Hawken* [1944] 1 WWR 408.

[27] In the upshot I ordered that the accused be enlarged on bail in the sum of RM500,000 with two sureties with security to be furnished. It is subject to acceptance of the following conditions:

(i) The accused is to surrender his firearm and the licence relating thereto to the police immediately;

(ii) All passports to be surrendered to the court;

(iii) The accused is to report to the police once in two weeks;

(iv) The accused is to remain indoors from the hours of 6pm to 8am;

(v) The accused is not to be present at any open public place or attend any public functions save for religious and family activities;

(vi) The accused is not to leave Kuala Lumpur and Petaling Jaya without leave of court;

(vii) The accused is to cease his legal practice within a period of one week from 8 August 2002.

The Finding Of This Court

[31] There can be no dispute that the charge faced by the accused is a very grave one. This, however, must be balanced against the failure by the prosecution to show that there are reasonable grounds for believing that the accused committed the offence that he has been charged with.

[32] All that the prosecution has to do is to satisfy the court by some materials or evidence produced that it would be able to produce *prima facie* evidence in support of the charge against the accused. See: *Che Su Daud v. PP* [1978] 1 LNS 23; [1978] 2 MLJ 162.

[33] On the part of the accused, it was submitted that "he was attacked by these rioters (about 20-25 people) and injured, it is unconscionable for accused to be preferred a murder charge considering the circumstances of which the 18 December 2020 incident happened so quick in a chaotic manner that moment when it was dark in the shop which could very well fall under s. 148 PC instead or in worse case under s. 304(b) PC."

[34] Learned counsel further made reference to para. 17 at PDF p. 5 of encl. no. 6 and the exhibits therein, on the day the incident, many of the suspects and/or witnesses did not see the incident of stabbing. Even para. 6 of the IO's affidavit stated the accused was hiding in the shop when the incident happened. The accused only came out of hiding after the riot was dispersed by the police. Hence, the investigation under s. 148/302 Penal Code was basically to categorise this case as murder, hence falls under a "non-bailable" offence.

[35] The argument by the prosecution is that the grounds forwarded by the accused are more out of convenience rather than of exceptional and very special circumstances. It was submitted that any grounds that is based on convenient circumstances should not be considered by this court in exercising its discretionary power to allow this application. Reference was made to the case of *Leow Nyok Chin v. PP* [1999] 1 CLJ 647, where the court held:

> There is also nothing in the report to suggest that the treatment which the accused needs cannot be obtained while in detention or that she will be deprived of such treatment or attention while in custody. The report states that the accused is now under treatment. As such, I cannot accept the submission that the accused needs help of the kind that will cure her mental disease and arrest it before it progresses into something permanent. With regard to the submission that psychiatric and/or medical observation which the accused needs will be made easier if she is on bail, **I cannot regard convenience as a matter the court will give any weight to in an application for bail**.

[36] There is also no evidence to suggest that the accused is a flight risk or would tamper with witnesses if released on bail. It must be noted that the main objective of bail is to ensure that the accused will attend court during trial and that while on bail, will not interfere with the administration of justice: *PP v. Dato' Balwant Singh* (*supra*).

[37] No argument was advanced by the prosecution to at least indicate that the accused would abscond or tamper with witnesses if released on bail. As no evidence presented to suggest otherwise, this court cannot premise its denial of bail to the accused on these reasons.

[38] Based on the medical report presented, the accused is in a very poor state of health and needs constant monitoring. In other words, he is a sick and infirm person within the meaning of the proviso to s. 388(1) of the Penal Code. The prison may be able to provide medical facilities. However, in view of the current pandemic and current state of the accused, it may be preferable for the accused to be in a place where he can have access to immediate medical treatment.

[39] It is also noted that affidavit paras. 10, 11 and 12 of Dr Norisyam bin Yusoff's affidavit in reply (encl. no. 13) never denied the need of a caretaker in the ward and this is consistent with prayer (c) of the notice of motion (encl. no. 5).

[40] There is also no evidence to suggest that the accused would repeat such offence while on bail.

[41] In the upshot, the accused shall be granted bail to undergo urgent medical treatment and spinal surgery at Orthopaedic Clinic, Queen Elizabeth Hospital (QEH 2), Kota Kinabalu subject to the following conditions:

(i) bail in the sum of RM200,000 (RM50,000 deposited in court) with two local sureties and one of them is his wife namely, Callieren binti Paunil;

(ii) prior to the surgery and the post-surgery, the accused to be taken care by his wife namely, Callieren binti Paunil;

(iii) that his international passport to be impounded;

(iv) no inter-State travelling without leave of court;

(v) to report to the nearest police station ie, at IPD Beaufort once in two weeks; and

(vi) not to approach or interfere with any of the witnesses.

[42] The applicant/accused's notice of motion dated 30 August 2021 (encl. 5) is therefore allowed.